

THE CROSS-BORDER TRUCKING PILOT PROGRAM

REPORT TO CONGRESS

Prepared by the Federal Motor Carrier Safety Administration pursuant to Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007
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Pursuant to Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, the terms of which have been incorporated in each subsequent U.S. Department of Transportation (DOT) appropriations act, this report details the actions that the Federal Motor Carrier Safety Administration (FMCSA) is taking or has taken to address the issues raised by DOT's Office of Inspector General (OIG) in its report to Congress concerning DOT's pilot program to demonstrate the ability of Mexico-domiciled motor carriers to operate safely beyond the commercial zones along the United States–Mexico border.

Congress directed OIG to determine and report, prior to the initiation of the pilot program, whether DOT has complied with the requirements of Section 350(a) of Public Law 107-87, and established sufficient mechanisms to apply Federal motor carrier safety laws and regulations to Mexico-domiciled carriers that are granted authority to operate beyond the commercial zones and to ensure compliance by such carriers [Sec. 6901(b)(1), P.L. 110-28].

On August 22, 2011, OIG transmitted a final report to Congress titled, "FMCSA Generally Complies with Statutory Requirements, but Actions are Needed Prior to Initiating its NAFTA Cross-Border Trucking Pilot Program." The OIG report documented the comprehensive safety programs FMCSA has implemented to oversee the drivers, vehicles, and motor carriers participating in the pilot program. The report also identified five in-process implementation issues that OIG believes DOT should address prior to initiating the pilot program. The concerns in the report include the need for FMCSA to (1) finalize plans for how the Agency will comply with Section 350(a) requirements to conduct 50 percent of the Pre-Authorization Safety Audits (PASA) and compliance reviews in Mexico; (2) issue coordinated site-specific plans to ensure that pilot program drivers and trucks are inspected at the border; (3) establish a system to verify driver and truck eligibility in the pilot program; (4) issue an implementation plan for using electronic monitoring devices in the pilot program; and (5) conduct pilot program training for inspection and enforcement personnel at the border and within the United States.

The DOT appreciates OIG's comprehensive effort in conducting this review, which included trips to locations along the Southern border to observe FMCSA inspection activities, discussions with State enforcement officials, and numerous conversations and exchanges of information with FMCSA personnel. The DOT also wants to thank OIG for the resources dedicated to this effort and for the timeliness of its review.

The following responses identify OIG's specific implementation issues and FMCSA's relevant actions:

1. OIG Issue: Finalize plans for how the Agency will comply with Section 350(a) of Public Law 107-87, requirements to conduct 50 percent of the Pre-Authorization Safety Audits (PASAs) and compliance reviews in Mexico.

Since OIG completed its research, FMCSA developed and implemented a policy providing direction on how the Agency will comply with the Section 350(a) requirement to conduct 50 percent of the PASAs and compliance reviews in Mexico. The FMCSA has provided a copy of this monitoring policy to OIG and is working with OIG to close this recommendation.

The FMCSA will be sending auditors in teams to ensure safety during the PASAs and compliance reviews. As of the date of this report, 11 Mexico-domiciled motor carriers have applied for long-haul authority. The FMCSA completed the PASAs for two of these carriers in Mexico on August 25 and 26, and will conduct the PASAs and compliance reviews of the additional applicants so as to remain in compliance with this requirement.

2. OIG Issue: Issue coordinated site-specific plans, or an alternative overall plan for coordinating with U.S. Customs and Border Protection (CBP) and the States, to ensure that pilot program drivers and trucks are inspected at the border.

Rather than issuing site-specific plans for checking trucks and drivers participating in the pilot program as the participants cross the border, FMCSA has developed an overall plan for coordinating with CBP and the States to ensure that trucks and drivers participating in the pilot program are inspected at the border.

Section 350(a) requires Mexico-domiciled motor carriers authorized to operate beyond the border commercial zones to bear a valid Commercial Vehicle Safety Alliance (CVSA) inspection decal and requires that Federal or State inspectors electronically verify the status and validity of 50 percent of all drivers participating in the pilot program. The FMCSA developed plans to ensure that this requirement is fulfilled.

Under the pilot program, FMCSA will pre-approve each driver and each vehicle that will participate in the program. Approved vehicles will display a suffix at the end of their USDOT Identification Number to enable enforcement personnel to quickly identify long-haul Mexico-domiciled vehicles. Furthermore, commercial motor vehicle inspectors will conduct a compliance check of each approved driver and vehicle during the carrier's first 3 months in the pilot program.¹

Once the carrier successfully completes this first phase of the program, compliance checks will be conducted randomly, as occurs with commercial zone carriers, and the status of 50 percent of all drivers participating in the program will be verified. The enforcement policy memorandum,

¹ Note: Carriers who participated for at least 3 months in the previous pilot program with an acceptable safety record will not be subject to compliance checks each time they cross for the first 3 months.

which is the customary procedure FMCSA uses to direct operations, specifically requires that during a compliance check, the inspector must verify the following:

- The power unit must display a current CVSA inspection decal, which ensures that the vehicle has successfully passed a Level I or V safety inspection within the last three months.
- The driver possesses a valid U.S. or Mexican commercial driver's license (CDL).
- The drivers' licenses of approved Mexican drivers are valid and meet all safety requirements.

If a driver or vehicle fails any portion of this compliance check, the enforcement personnel will direct the driver to a site to conduct a secondary inspection. Violations will be documented and appropriate enforcement initiated, including placing the driver or vehicle out of service until the defects or deficiencies are corrected. Vehicles with an obvious mechanical safety defect will also be inspected regardless of the presence of a current CVSA inspection decal.

To ensure successful execution of the safety inspections, FMCSA will use electronic monitoring devices with Global Positioning System capabilities, to track participating vehicles. The "geo-fencing" capabilities of the system will allow the Agency to receive alerts for pending arrivals of participating trucks at border crossings. Notifications of pending arrivals will be disseminated to Federal and State safety inspectors to ensure that pilot program drivers and trucks are inspected as required. Coupled with the Agency's policy on inspections, this guidance provides the information needed to conduct the inspection program at the border.

3. OIG Issue: Establish a system to verify driver and truck eligibility in the pilot program. C

A key difference between this pilot program and DOT's previous demonstration project is that the participating Mexico-domiciled carriers must designate specific vehicles and drivers to be used for long-haul transportation. The participating vehicles will be inspected during the PASA, and the drivers will be assessed for English language proficiency, vetted by CBP, and their safety records reviewed by FMCSA before they are approved.

To this end, FMCSA must have a system to allow FMCSA and State enforcement officers nationwide to validate that the vehicle and driver are approved for transportation beyond the border commercial zones. Since the OIG report, FMCSA has completed work to post this eligibility information on its Query Central system. Query Central is an existing system that allows only FMCSA and State and local law enforcement to search FMCSA's databases for information. The FMCSA added a module to the system that lists the approved vehicles by vehicle identification number, make and model, and lists the approved drivers by name, date of birth, and driver's license number. This system became operational on August 22, 2011, and FMCSA is working with OIG to close this recommendation.

The FMCSA provided information to the States on how to access the system through its field offices and in an August 29 enforcement policy memorandum titled, "Requirements for Inspection of Commercial Motor Vehicles operated by Mexico-Domiciled Carriers under the Long Haul Pilot Program." Additionally, FMCSA developed and hosted webinars for law

enforcement on August 30 and 31. Those webinars were recorded and posted to FMCSA's Web site for viewing by law enforcement officials who could not attend the live webinars. The FMCSA is working through the Commercial Vehicle Safety Alliance and the International Association of Chiefs of Police to encourage law enforcement across the country to view this webinar.

In addition, the Agency is preparing visor cards that it will provide to participating motor carriers and to State and local law enforcement. These visor cards provide direction on how to validate that the driver and truck are approved participants in the program. The FMCSA will distribute these outreach materials prior to beginning the program.

4. OIG Issue: Issue an implementation plan for using electronic monitoring devices in the pilot program.

At the time of the OIG report, FMCSA was completing its acquisition of the electronic monitoring devices. On August 29, 2011, FMCSA awarded the contract for this equipment, the installation services, and report creation to Teletrac, Inc., of Garden Grove, California. The contract requires the vendor to provide training on the devices to FMCSA and State law enforcement staff. Teletrac completed this training for FMCSA in September 2011.

Once a carrier successfully completes the application for authority, CBP vetting, and PASA processes and files evidence of financial responsibility, FMCSA will schedule installation of the electronic monitoring devices on the vehicles approved for participation in the pilot program. No vehicles will be permitted to participate without this equipment being installed and operational.

5. OIG Issue: Conduct pilot program training for inspection and enforcement personnel at the border and within the United States.

In preparing the report, the OIG staff interviewed State enforcement officials and confirmed their general readiness to enforce safety rules during the pilot program. However, the OIG report noted that, at the time of its review, training had not been completed.

The Agency provided webinars for law enforcement staff on August 30 and 31 that provided an explanation of the pilot program and law enforcement's role when encountering participating drivers and vehicles. Those webinars were recorded and posted to FMCSA's Web site for viewing by law enforcement officials who could not attend the live webinars. Those materials will remain available online for their viewing.

In July 2011, FMCSA also trained 100 percent of its auditors who will conduct PASAs on the procedures for conducting PASAs and inspections of participating carriers, drivers, and vehicles.

SUMMARY

The DOT appreciates OIG's careful review, and the Department is pleased that FMCSA could fully address the issues in the OIG report. The DOT has fulfilled the statutory requirements prior to initiation of the pilot program, as listed in Section 6901 of Public Law 110-228, including working with Mexico to ensure that it can and will grant reciprocal authority to U.S. carriers. The FMCSA has also satisfied all elements of Section 350(a) of Public Law 107-87 and implemented other safety measures, in addition to those required by statute, to ensure that carriers in this pilot program operate safely. Additional measures included obtaining electronic monitoring devices and establishing a requirement for vehicles to be inspected each time during the carrier's first 3 months in the program. On April 13, 2011, FMCSA published a *Federal Register* notice describing in detail the pilot program and addressing specific requirements of Section 6901(b)(2)(B). On July 8, 2011, FMCSA published responses to the comments received. By submitting this report, DOT has fulfilled the remaining requirement of Section 6901(b)(2)(A).

In addition to the steps outlined above to address OIG's findings, FMCSA has an ongoing effort, as committed to in the July 8, 2011, *Federal Register* notice, to visit a number of Mexican CDL testing facilities to review compliance with the 1991 Memorandum of Understanding on CDL reciprocity. The FMCSA completed this validation effort in September 2011.

The pilot program is an important step toward fulfilling the United States' obligations under the North American Free Trade Agreement, removing tariffs on U.S. goods, and maintaining the relationship with one of the Nation's largest trading partners.